

AP/382/2021
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

G R INFRASTRUCTURE PRIVATE LIMITED
VERSUS
BRIDGE AND ROOF COMPANY (INDIA) LTD.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
Date: 8th December, 2021.

[Via Video Conference]

APPEARANCE:

Mr. Arijit Basu Advocate
Ms. Sarada Hariharan, Advocate
.....for the applicant
Ms. Neelina Chatterjee, Advocate
Mr. Suvodeep Chakraborty, Advocate
.....for the respondent

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the disputes between the parties.

A contract was entered into between the parties in respect of hiring of one Crawler Mounted Crane by issuance of the work order dated 9th May, 2018. The contract contains following arbitration clause:

"1.27. ARBITRATION

B&R confidently feel that there shall not arise any disputes or differences during execution and completion of the order/Contract by the Contractor(s).

However, in the event of any dispute arising between the Company and the Contractor (hereinafter referred individually as "the Party" and collectively as "the Parties)", concerning the interpretations of any terms and conditions of the Contract and/or contractual obligations/performance/liabilities/responsibilities of the Parties to the said Contract, the disputing Party shall refer the matter to the other Party for holding a mutual discussion for resolving the dispute.

In case the Parties fail to arrive to any settlement through mutual discussion, either of the parties may avail the following remedies.

Resolution of Dispute through Conciliation:-

- (i) *Any party may refer the dispute for Conciliation under Rules of Conciliation and Arbitration under SCOPE Forum of Conciliation and Arbitration (SFCA), 2003 and amendments made thereto from time to time (hereinafter referred to as "the Rules") by making application to the Secretariat of the SCOPE Forum.*

The Party initiating conciliation shall send to the other party a written invitation to conciliate under the Rules, briefly identifying the subject matter of the dispute. The settlement so rendered between the Parties in pursuance thereof shall be final and binding on the Parties. If the other party rejects the invitation, there will be no conciliation proceeding at all.

Resolution of Dispute through Arbitration:-

- (ii) *In case the dispute is not settled by conciliation within 30 days of the initiation of conciliation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by Arbitration, in accordance with the Rules of Arbitration of SCOPE Forum of Conciliation and Arbitration, 2003 and amendments thereto from time to time.*

The venue of Arbitration shall be mutually decided by the Parties.

In case the Parties do not agree for resolution of dispute through Conciliation and Arbitration by the above-mentioned SCOPE Forum, the disputing Party shall opt for stipulated rules laid down under the Arbitration and Conciliation Act, 1996.

*The Contract and the Parties therein shall be governed under the jurisdiction of Calcutta High Court. In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts and commercial agreements (except Income Tax, Customs, Excise duty and also concerning Railways) between company (B&R) and any other Public Sector Undertaking/Government Department/Bank/Port Trust etc., such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary of the Government of India in-charge of the Department of Public Enterprises. **The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause.** The award of the arbitrator shall be binding upon to the parties to the dispute, provided, however, any party aggrieved by such award may take a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India.*

Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary, when so authorised by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

Subject to any amendment that may be carried out by the Government of India from time to time, the procedure to be followed in the arbitration shall be as mentioned above, which is as per O.M.No.4(1)/2011-DPE(PMA)GL dated 12.06.2013 of Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Govt. of India or any modification issued in this regard.”

A dispute has arisen between the parties, therefore, the notice for appointment of arbitrator was given by the applicant on 23rd March, 2021 and no response to the said notice was received, hence the applicant has approached this Court.

Learned counsel for the respondent has not disputed the arbitration agreement but has submitted that some retired High Court Judge be appointed as arbitrator to resolve the disputes between the parties. The said suggestion is not disputed by the counsel for the applicant.

Considering the fact that the arbitration agreement exists between the parties and dispute has arisen and taking note of the submissions made by counsel for the parties, as noted above, AP No. 382 of 2021 is allowed by appointing Justice Aloke Chakraborti, a retired High Court Judge as arbitrator to resolve the disputes between the parties.

(PRAKASH SHRIVASTAVA, C.J.)